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Water Docket  
Environmental Protection Agency  
Mail code 2822T  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

RE: TMDL for the Chesapeake Bay Watershed  
(Docket ID No. EPA –R03-OW- 2010-0736)

Dear EPA:

The membership of the Peninsula Housing & Builders Association (PHBA) wishes to take this opportunity to comment on the proposed Chesapeake Bay Watershed TMDL. Our members have significant objections regarding certain aspects of the proposed TMDL by the Environmental Protection Agency (EPA).

PHBA is comprised of more than 350 businesses in the Hampton Roads area that provide homes, products and services to the local housing industry. Our membership continues to struggle through the fifth straight year of a historic decline in housing production and sales, with nearly all of our members having to lay off one or more employees to stay in business.

Our local members, along with numerous other Virginia businesses, local governments and farmers, simply cannot at this time absorb this unprecedented and unfunded federal mandate. The TMDL for the Chesapeake Bay not only will extend the historic decline of housing, and continue the so-called ‘jobless recovery,’ but we believe it will expand the decline into many other sectors of the state’s economy.

It also appears apparent that the EPA has chosen to rush in this direction, heedless of its cost, because as we have learned, the EPA has chosen not to conduct a cost analysis for the Bay TMDL.

We strongly urge the EPA to conduct such a cost analysis. We strongly urge the EPA to slow down and take into account the significant concerns of the national housing industry, the business community, and numerous local governments affected by the economic impact the Bay TMDL. York County, one of our local governments, has learned that the estimated costs associated with implementing the TMDL would take up one-third of its existing budget.

Perhaps this rush would be understood if Virginia had not accomplished major reductions in pollutants. But yet it has been well documented, and the EPA has acknowledged that, at tremendous expense, Virginia has made enormous progress in reducing nitrogen, phosphorous, and sediment discharges into the Chesapeake Bay and its tributaries from all source sectors since 1985. Virginia nitrogen loads have been reduced from almost 90 million pounds per year to just above 60 million pounds per year.

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Phosphorous loads have been reduced from almost 12 million pounds per year to just over 6 million pounds per year. And, the Commonwealth and its citizens have made a big public commitment to continue the state's own pollution diet. Virginia does not need, nor should the EPA demand additional draconian clean up actions at this time, especially with no regard to the economic impact and costs of their demands.

Our membership also strongly objects to the very limited public comment period. Given the complex nature of the TMDL and its significant costs, the 45-day limited public comment period is inadequate and should be immediately extended. The EPA should not impose this level of impact on the Commonwealth, its citizens and its businesses, while ignoring notice requirements and cost analysis requirements of federal law (the Administrative Procedures Act and the Small Business Regulatory Act).

PHBA members also have significant concerns about proven deficiencies in the Chesapeake Bay Model. Data from the model significantly affect the pollutant loading of the Watershed Implementation Plans being developed by the Bay states. The independent United States Geological Survey has questioned the accuracy of the impervious surface data in the model, and others have questioned the accuracy of the agricultural BMP projections. Those two (2) flawed data points are just a sampling of other significant flaws in the model that are resulting in lower nutrient caps for all Bay states. For this reason alone, the EPA should delay implementing the TMDL. If the model is deficient, the final pollutant loads will be deficient.

PHBA members also strongly dispute the authority of the EPA to mandate that private owners reduce or retrofit their property's impervious surfaces, as may be imposed in the proposed backstop allocations. Both the U.S. Constitution and Virginia Constitution protect private property owners from a "taking without just compensation" by the government. The very high estimated costs associated with the retrofit requirements or mandates in the proposed backstop allocations clearly approach a "taking without just compensation" of private property. HBAV would urge the EPA to seek other less expensive and less intrusive solutions to the clean up of the Bay and its tributaries.

On behalf of our membership, I thank you for this opportunity to comment on this Chesapeake Bay TMDL.

Best regards,

Robert Duckett, Director of Public Affairs  
Peninsula Housing & Builders Association